

Notice of Rule Making and Public Hearing

The Arkansas Economic Development Commission (AEDC) is considering rules for administering the Developmental Disabilities Provider Emergency Loan Program (ELP). The proposed rule defines the process by which AEDC shall administer the ELP.

The Arkansas Economic Development Commission is soliciting comments on the proposed rule filed with the Secretary of State on July 24, 2020. A virtual public hearing for the proposed rule will be held at 8:30 am to 9:30 am on August 11, 2020 via “Zoom.”

The proposed rule is available for review on AEDC’s website at www.arkansasedc.com/rules or may be obtained by contacting Renee Doty, Director of Policy and Legislative Affairs, at (501) 682-2460. Written comments may be submitted through August 25, 2020, by mailing to the Arkansas Economic Development Commission, Policy and Legislative Affairs Division, 1 Commerce Way, Suite 601, Little Rock, Arkansas 72202 or by email to AEDC.SNP.Rules@Arkansas.gov.

Participants can join the virtual public hearing from PC, Mac, Linux, iOS or Android at:

<https://arkansas-gov.zoom.us/j/91713168954?pwd=ZVZHMGpNajljcjBJclJoWUk3NFgzQT09>

Meeting ID: 917 1316 8954

Passcode: 852212

Telephone Toll Free: 877-853-5257 or 888-475-4499

?

DEVELOPMENTAL DISABILITIES PROVIDER EMERGENCY LOAN PROGRAM

Overview

As a result of the national COVID-19 pandemic, many nonprofit organizations are facing significant financial struggles resulting in layoffs of employees and curtailment of operations. Developmental Disabilities Providers (the “Providers”) have been hit especially hard due to social distancing measures that have reduced billable services. Providers with fewer than 500 employees have been able to take advantage of the federal Paycheck Protection Program (“PPP”) loans administered through the U.S. Small Business Administration, however Providers with more than 500 employees are not eligible for PPP loans.

The Providers with more than 500 employees have a significant economic impact to the State of Arkansas by providing employment opportunities to the developmentally disabled population and by providing caregiving so that family members may work. The cessation of operations by any of these Providers would have a significant detrimental economic impact on the State of Arkansas.

Based on the forgoing economic development need, and pursuant to the authority granted under Ark. Code Ann. § 15-4-209(a)(1) and § 15-4-209(b)(5), the Arkansas Economic Development Commission (“AEDC”) is establishing this Developmental Disabilities Provider Emergency Loan Program (the “ELP”) to address this need and in so doing benefit the economy of Arkansas.

Section 1: Eligibility Criteria for ELP Loans.

AEDC may provide loans under the ELP to any Provider who:

- A. Is an “accredited nonprofit entity” under Ark. Code Ann. § 20-48-101;
- B. Had at least 500 employees as of February 15, 2020;
- C. Because of the current economic uncertainty pertaining to the COVID-19 pandemic, needs an emergency loan in order to support the ongoing operations of the Provider;
- D. Intends to use the loan proceeds for necessary working capital purposes, including payroll, rent/mortgage payments, and utilities; and
- E. Has been unable to secure the needed working capital through other programs administered by the State of Arkansas or the federal government.

Loans under the ELP must be closed and funded by no later than December 30, 2020. AEDC shall make no loans under the ELP after that date. The maximum aggregate amount of loans that may be funded under the ELP shall not exceed the lesser of i) the amount appropriated by the Legislative Council of the Arkansas General Assembly, or ii) \$7,844,021.

Section 2: AEDC’s Responsibilities under the ELP.

- A. AEDC shall conduct a review of Provider’s business financial statements and any other documents germane to a prudent lender review and satisfy itself as to the credit worthiness of Provider. In making its determination of credit worthiness, AEDC shall be permitted to take into account the current economic circumstances due to COVID-19 to the extent those circumstances may have affected Provider’s credit worthiness. AEDC may also consider the likelihood of loan forgiveness pursuant to these rules in assessing Provider’s credit worthiness.

- B. AEDC will document the loan using forms of loan agreements and promissory notes as is customary for loans of the amounts and duration available under the ELP.
- C. AEDC shall maintain all the loan instruments in its files pursuant to its record keeping policies, receive all payments of principal and interest on the loan, and take any other action as may be required or appropriate to administer and service the loan in accordance with the normal practices of prudent lenders for the type and amount of the loan, including, without limitation:
 - 1. Make or consent to any transfer or assignment of the loan and any note or interest therein or any material alteration in the terms of any loan instrument;
 - 2. Modify any repayment terms;
 - 3. Waive or release any claim against the borrower, surety, guarantor, or other obligor, or any other creditor of trustee in bankruptcy, arising out of any loan instrument; and
 - 4. Pursue collection of any unpaid amounts owing under a loan, including the commencement of legal proceedings against a Provider.

Section 3: Application for an ELP Loan.

- A. To apply for an ELP loan, a Provider shall submit an application on a form prescribed by AEDC along with any required supporting documentation requested by AEDC.
- B. AEDC shall evaluate each application and any supporting documentation to determine whether it will provide a loan to Provider. AEDC's approval or disapproval of a loan application is within the sole discretion of AEDC's Executive Director. The Executive Director's determination shall be conclusive and final.
- C. Following approval of the borrower's loan application, AEDC will notify Provider of the proposed terms of the loan, including principal amount, interest rate (if any), duration, collateral description and value (if any), and all other relevant information.

Section 4: Loan Terms.

- A. The principal amount of a loan under the ELP may not exceed an amount equal to the product of the number 2.5 multiplied by the Provider's average monthly payroll for 2019, excluding any amounts paid to an employee over \$100,000 on an annualized basis. In calculating the maximum principal amount of an ELP loan, AEDC shall follow the rules and methodology of the United States Small Business Administration under the PPP, including approved alternative methods for calculating average monthly payroll. Provider shall, upon request by AEDC, provide such documentation as AEDC may reasonably require which evidences Provider's average monthly payroll.
- B. ELP loans shall be for a term of up to two years. No principal payments on the loan shall be due until the loan maturity date. In the event of any default under a loan instrument by a Provider, AEDC may elect to accelerate the maturity date of the loan and demand payment in full.
- C. ELP loans shall not bear interest unless there is an event of default under a loan instrument which is not cured within 30 days to the reasonable satisfaction of AEDC. Following an event of default, the unpaid principal amount shall bear interest at the judgment rate under Arkansas law.

Section 5: Loan Forgiveness.

- A. Loans under the ELP shall be completely forgivable under the same terms and methodology as loans are forgiven under the PPP administered by the United States Small Business Administration.
- B. The unpaid principal amount of an ELP loan shall be forgiven to the extent of the sum of the amounts specified in Section 5(c) paid by a Provider during the 24-week period immediately following the closing of the loan (the "Covered Period").
- C. The following categories of expenses paid by the Provider during the Covered Period shall be considered for purposes of loan forgiveness under this Section 5:
 - 1. Payroll costs consisting of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); payment for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees; and for an independent contractor or sole proprietor, wages, commissions, income, or net earnings from self-employment, or similar compensation;
 - 2. Mortgage interest payments (but excluding amounts attributable to principal) for real property owned by Provider;
 - 3. Rent payments for facilities leased by Provider; and
 - 4. Utility payments for Provider's facilities.
- D. If the average number of full-time employees during the Covered Period is less than during the period applicable to calculating the loan amount in Section 4(A), the total eligible expenses available for forgiveness will be reduced proportionally by the percentage reduction in full-time employees.
- E. For each new employee in 2020 and each existing employee who was not paid more than the annualized equivalent of \$100,000 in any pay period in 2019, the Provider must reduce the total forgiveness amount by the total dollar amount of the salary or wage reductions that are in excess of 25 percent of base salary or wages during the Covered Period. This reduction calculation is performed on a per employee basis, not in the aggregate.
- F. At least 60% of the expenses counted toward loan forgiveness must be attributable to payroll costs under Section 5(c)(1). In the event less than 60% of the expenses are attributable to payroll costs, the expenses attributable to Sections 5(c)(2)-(4) shall be reduced so that payroll costs account for 60% of the total expenses counted toward forgiveness.

Section 6: CARES Act Compliance.

- A. AEDC shall fund and administer ELP loans consistent with the requirements of Section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act.").
- B. A Provider receiving an ELP loan shall be obligated to promptly repay any loan amount to AEDC if it is subsequently determined that Provider's loan is not allowable under the CARES Act or if Provider fails to use the loan proceeds consistent with the requirements of the CARES Act.